

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

EL TELAR FRANCHISE, CORP.

DEBTOR

CASE NO. 09-07553-BKT11

CHAPTER 11

**- ATTORNEY'S FIRST APPLICATION FOR ALLOWANCE OF COMPENSATION AND
REIMBURSEMENT OF NECESSARY COSTS AND EXPENSES
(for the period of December 8, 2009 to May 31, 2010) -**

TO THE HONORABLE COURT:

COMES NOW, MELLADO & MELLADO-VILLARREAL, plaintiff's attorney and applicant in this matter, who respectfully files this application for allowance of compensation and reimbursement of expenses and represents and states as follows:

1. This application is submitted in compliance with the Guidelines of the U.S. Trustee's Office, for reviewing applications for professional compensation and reimbursement of expenses.

2. *Background:*

a) Debtor, El Telar Franchise Corp., filed a voluntary Petition under Chapter 11 of the Bankruptcy Code, on September 8, 2009, under case number 09-07553.

b) The application for employment of the undersigned attorney was filed on October 12, 2009, provided that payments of fees and expenses are subject to the approval of the Court. The employment of the undersigned attorney was approved on November 20, 2009.

c) The hourly rates agreed to by applicant and debtors, disclosed in the referred application for compensation were \$175.00 per hour.

Attorney's First Application for Allowance of Compensation and Reimbursement of Necessary Costs and Expenses (for the period of December 8, 2009 to May 31, 2010)

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d) On January 15, 2010 Debtor filed a complaint under the Adversary Proceeding against defendant Gladys Montes under number 10-00004-ESL. (Docket 35)

e) On March 11, 2010 Debtor filed a complaint under the Adversary Proceeding against defendant Luis Daniel Miranda Ortiz under number 10-0040-ESL. (Docket 78).

f) Professional services for which allowance of compensation and reimbursement of expenses payment is sought were performed during the period from December 8, 2009 up to May 31, 2010.

g) This is applicant's first professional fee application.

3. The status of the case, related to the services provided by the undersigned, is as follows:

a) Adversary Proceeding – Gladys Montes

i) A hearing was held on May 25, 2010 in which the court ordered the parties to file a settlement agreement within ten days. The continuance of the Pretrial is still pending.

ii) Also the court ordered that if the parties could not file a settlement agreement the court will enter a preliminary injunction and will order defendant to show cause why answer should not be stricken and judgment entered in favor of plaintiff. This order should have been complied within 14

days.

iii) In order to comply with the court's order we sent a letter to Anabelle Quiñones-Rodríguez, Esq. inviting her for a meeting on May 31, 2010 but she did not attend to the meeting.

b) Adversary Proceeding – Luis Daniel Miranda

i) A hearing was held on May 25, 2010 in which the court ordered the parties to file a settlement agreement within fourteen days.

ii) Also the court ordered that if the parties could not file a settlement agreement the court will scheduled the trial for the request for injunctive relief.

iii) In order to comply with the court's order we sent a letter to Isa M. Gratacós - Padró, Esq. inviting her for a meeting on May 31, 2010.

iv) On the meeting held on May 31, 2010 the parties could not reach an agreement.

v) On June 14, 2010 the court ordered that the trial is scheduled for August 24, 2010 at 2:00PM and that the parties shall file proposed findings of fact and conclusion of law ten days prior to the trial. (Docket #35)

4. A summary of professional time and fees requested, and for which this application is filed is as follows:

Total Fees Incurred	\$24,325.00
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Attorney's First Application for Allowance of Compensation and Reimbursement of Necessary Costs and Expenses (for the period of December 8, 2009 to May 31, 2010)

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Expenses	\$ <u>173.00</u>
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Total	\$24,498.00
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5. Applicant provides an itemized description of services rendered with entries organized in chronological order and costs and expenses are also detailed in the enclosed breakdown marked as Exhibit I an II, respectively.

6. Applicant hereby certified that the enclosed breakdown of fees and expenses has been discussed and agreed to by debtors.

7. I hereby certify that I have read the application and to the best of my professional knowledge, information and belief formed after reasonable inquiry, the compensation and expenses reimbursement sought conforms with the guidelines of the U. S. Trustee and that the compensation and expense reimbursement requested herein, actual and necessary, are billed at rates in accordance with practices no less favorable to the Debtor/Estate, than those customarily employed.

WHEREFORE, applicant respectfully prays this Honorable Court to enter an order allowing the compensation and reimbursement of necessary expenses sought hereunder in the total sum of **\$24,498.00** representing **\$24,325.00** in professional fees and **\$173.00** in reimbursement of necessary costs and expenses incurred, and thereupon to authorize and direct the debtor in possession to pay applicant **\$24,498.00** from the funds of the estate as an administrative expense allowable under 11 U.S.C. Section 503(b).

Attorney's First Application for Allowance of Compensation and Reimbursement of Necessary Costs and Expenses (for the period of December 8, 2009 to May 31, 2010)

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I hereby certify that on this same date I have filed a Notice I hereby certify that on June 21, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties of record; I hereby certify that I have mailed by the United States Postal Service this document to the following non CM/ECF participant: Anabelle Quiñones-Rodríguez, Esq. Mayagüez St. No. 22, San Juan, Puerto Rico 00917 and I hereby certify that a Notice to Parties in Interest has been filed in this same date.

In San Juan, Puerto Rico, this 21th day of June, 2010.

RESPECTFULLY SUBMITTED.

NOTICE TO PARTIES IN INTEREST

PLEASE TAKE NOTICE that unless a written objection to this fee application is filed, with the Clerk of the U.S. Bankruptcy Court with copy to the undersigned, within 21 days from the date of this notice, pursuant to FRBP 2002(a)(6), this application may be allowed by the Court without further notice or hearing.

s/ Jairo Mellado-Villarreal, USDC-PR 208112
MELLADO & MELLADO-VILLARREAL
165 Ponce de León Ave. - Suite 102
San Juan, Puerto Rico 00917-1233
Tel. 787-767-2600/Fax 787-767-2645
E-Mail: jmellado@mellado.com

MELLADO & MELLADO VILLARREAL

165 Ponce de León Avenue

Suite 102

San Juan, PR 00917-1233

May 31, 2010

Invoice #2010240

El Telar Franchise Corporation
P.O. Box 362469
San Juan,, PR 00936-2469

RE:

El Telar Franchise v Luis Daniel Miranda
Adversary Proceedings #10-0040

Professional Services Rendered

	<u>Hrs/Rate</u>	<u>Amount</u>
2/26/2010 Work on the pleadings of the injunction and complaint against Mr. Miranda.	0.30 175.00/hr	52.50
3/1/2010 Continue the preparation of the complaint for the case of reference.	1.00 175.00/hr	175.00
3/3/2010 Prepare draft of complaint for collections of monies.	1.50 175.00/hr	262.50
3/4/2010 Continue preparing draft of collection of monies and injunction complaint.	1.50 175.00/hr	262.50
3/9/2010 Send e-mail to Mr. Isaac Roffe to follow up sub-lease agreement rejection. Receive e-mail in response.	0.20 175.00/hr	35.00
Prepare final draft of the pleadings in the case of reference.	1.00 175.00/hr	175.00
Prepare motion requesting injunctive relief.	1.00 175.00/hr	175.00
Prepare El Telar's Request for TRO and Injunctive Relief.	1.00 175.00/hr	175.00
3/10/2010 Prepare final pleadings and memorandum requesting a temporary restraining order and preliminary injunction against defendant.	1.00 175.00/hr	175.00

	<u>Hrs/Rate</u>	<u>Amount</u>
3/15/2010 Prepare final draft of the injunction and TRO and file with the court.	1.00 175.00/hr	175.00
3/18/2010 Review court order denying TRO and fixing date for the Injunction hearing.	0.10 175.00/hr	17.50
3/19/2010 Prepare Certificate of Service.	1.00 175.00/hr	175.00
3/24/2010 Analysis of Franchise Agreement and applicable sections for the injunction hearing. Prepare a list of all exhibits.	2.00 175.00/hr	350.00
3/25/2010 Continue to prepare outline of allegations and applicable sections of Franchise Agreement.	2.00 175.00/hr	350.00
3/26/2010 Meeting with clients regarding several issues of the case.	2.00 175.00/hr	350.00
Continue to prepare outline of interrogatories.	1.00 175.00/hr	175.00
Legal research over franchise agreement and its legal requirements.	1.50 175.00/hr	262.50
Legal research of articles of the civil code.	1.50 175.00/hr	262.50
3/29/2010 Review documents on file to prepare for the injunction hearing.	2.00 175.00/hr	350.00
Prepare the direct examination of Mr. Isidoro Roffe.	1.00 175.00/hr	175.00
Prepare the direct examination of Mr. Victor Roffe.	1.00 175.00/hr	175.00
Prepare letter to Mr. Rafael Aponte Garcia from the Trademark Office - PR Department of State - to request certificate of ownership of Maxxima marks.	1.00 175.00/hr	175.00
3/30/2010 Prepare for hearing in the case of reference by meeting with Mr. Isidoro and Isaac Roffe.	4.00 175.00/hr	700.00
3/31/2010 Attend injunction hearing at Bankruptcy Court.	2.50 175.00/hr	437.50
Meeting with Mr. Victor Roffe in preparation for hearing.	1.50 175.00/hr	262.50

	<u>Hrs/Rate</u>	<u>Amount</u>
4/1/2010 Legal research on the validity of non compete clauses in commercial relationships vis a vis employer-employee relationships.	2.50 175.00/hr	437.50
4/5/2010 Review the motions of the case and commence drafting the motion for reconsideration as to the non compete agreement.	2.60 175.00/hr	455.00
Continue with legal research for the validity of non compete clauses inside the jurisdiction of PR.	4.20 175.00/hr	735.00
Telephone conference with Attorney Gratacos as to compliance with the courts order as to the trademarks.	0.20 175.00/hr	35.00
Reading and consideration of Answer to Complaint and Counterclaim.	0.10 175.00/hr	17.50
Legal research of time to file answer to counterclaim.	0.10 175.00/hr	17.50
4/6/2010 Continue drafting the motion for reconsideration as to the non compete agreement.	4.50 175.00/hr	787.50
Prepare draft of answer to defendant's counterclaim.	2.00 175.00/hr	350.00
Legal research of the validity of non compete clauses in PR's jurisdiction for the Motion for Reconsideration.	1.00 175.00/hr	175.00
Research of the meaning and application of the "rule of reason".	1.00 175.00/hr	175.00
4/7/2010 Continue to prepare draft of El Telar's Motion for Reconsideration of Injunctive Relief.	4.20 175.00/hr	735.00
4/8/2010 Prepare and file final draft of the motion for reconsideration.	0.20 175.00/hr	35.00
4/9/2010 Prepare letter to attorney Isa Gratacós requesting lists of Maxxima inventory and signage.	1.00 175.00/hr	175.00
Reading and consideration of motion for reconsideration filed by Mr. Miranda.	0.10 175.00/hr	17.50
Review order scheduling hearing for May 25, 2010.	0.10 175.00/hr	17.50
Prepare and file final draft of the reply to the counterclaim.	1.00 175.00/hr	175.00

	<u>Hrs/Rate</u>	<u>Amount</u>
4/9/2010 Legal research of appeal as of right.	1.50 175.00/hr	262.50
Process of appeals before the Bankruptcy Court and/or District Court.	1.50 175.00/hr	262.50
Reading and consideration of Luis Miranda's opposition to El Telar's Request for Reconsideration.	0.20 175.00/hr	35.00
4/12/2010 Reading and consideration of court order and minutes as to the injunction - trademarks and non competition.	0.10 175.00/hr	17.50
4/13/2010 Telephone call with clerk of Judge Lamoute to request information about minutes of the proceedings.	0.20 175.00/hr	35.00
5/17/2010 Prepare letter to Isa Grataco, Esq. inviting her to a meeting to discuss the Joint Pre Trial Order.	0.80 175.00/hr	140.00
5/18/2010 Reading and consideration of applicable case law.	0.20 175.00/hr	35.00
Start to prepare outline for motion to the Bankruptcy Court.	3.00 175.00/hr	525.00
5/19/2010 Work on the draft of the motion in support of the motion for reconsideration per the case of Mandy's BBQ.	1.50 175.00/hr	262.50
Start to prepare joint pre trial order.	2.20 175.00/hr	385.00
5/20/2010 Work on the draft of the motion in support of the motion for reconsideration per the case of Mandy's BBQ.	1.00 175.00/hr	175.00
Meeting with Isa Gratacós, Esq. to discuss possibility of settlement.	4.00 175.00/hr	700.00
5/21/2010 Work on the draft of the motion in support of the motion for reconsideration per the case of Martin's BBQ.	1.00 175.00/hr	175.00
Telephone call with Isa Gratacós, Esq. to inform El Telar's denial to the offer.	0.10 175.00/hr	17.50
Prepare and file the motion requesting authorization to file reply in support of the motion for reconsideration per the case of Martin's BBQ.	2.00 175.00/hr	350.00
Second telephone call to inform El Telar's denial to counteroffer.	0.10 175.00/hr	17.50

	<u>Hrs/Rate</u>	<u>Amount</u>
5/21/2010 Review draft of joint pre trial order and send to Isa Gratacós, Esq.	2.00 175.00/hr	350.00
5/24/2010 Prepare draft of motion to withdraw docket # 27.	1.00 175.00/hr	175.00
5/25/2010 Attend court hearing in the case of reference.	2.00 175.00/hr	350.00
5/26/2010 Prepare letter to Isa Gratacós, Esq. to schedule a meeting to discuss possible settlement of the case.	1.00 175.00/hr	175.00
5/31/2010 Meeting with Mrs. Isa Gratacos regarding the possibility of reaching a settlement agreement with defendant Mr. Luis Daniel Miranda.	2.00 175.00/hr	350.00
Telephone conference with Mr. Victor Roffe to discuss the terms and the possibility of reaching a settlement agreement with defendant Mr. Luis Daniel Miranda.	0.30 175.00/hr	52.50
For Professional Services Rended OUT OF POCKET DISBURSEMENTS	86.10	\$15,067.50
3/19/2010 Process server fees to summon Mr. Luis Daniel Miranda Ortiz.		50.00
3/25/2010 Request of Certificate of Registry of Trademark (Maxxima) at the State Department.		45.00
Total Out of Pocket Disbursements		\$95.00
Total of this Invoice		\$15,162.50
Total Balance Due		\$15,162.50

MELLADO & MELLADO VILLARREAL

165 Ponce de León Avenue

Suite 102

San Juan, PR 00917-1233

May 31, 2010

Invoice #2010239

El Telar Franchise Corporation
San Juan, PR

RE:

El Telar Franchise v. Gladys Montes
Adversary Proceedings #10-00004

Professional Services Rendered

	<u>Hrs/Rate</u>	<u>Amount</u>
12/8/2009 Telephone call with attorney Sánchez regarding adversary proceedings.	0.30 175.00/hr	52.50
Legal Research - as to the survival of the non-compete clause of an executory contract.	2.00 175.00/hr	350.00
12/16/2009 Prepare draft of Collection of Monies and Preliminary and Permanent Injunction for breach of contract.	2.50 175.00/hr	437.50
1/11/2010 Continue working on the final draft of the pleadings against Mrs. Gladys Montes.	1.00 175.00/hr	175.00
1/14/2010 Prepare final draft of pleadings against Ms. Gladys Montes and file with the Bankruptcy Court.	0.50 175.00/hr	87.50
1/15/2010 Prepare and file final complaint with request for injunction.	1.00 175.00/hr	175.00
1/19/2010 Prepare and file the summons served on defendant in the case of reference.	0.20 175.00/hr	35.00
1/27/2010 Review email from Mr. Isaac Roffe with the evidence in the case of referencia.	0.10 175.00/hr	17.50
Review evidence received by e-mail related to Ms. Montes' adversary proceedings.	0.30 175.00/hr	52.50

	<u>Hrs/Rate</u>	<u>Amount</u>
1/28/2010 Attend meeting for discussion of various matters over the adversary proceedings.	2.00 175.00/hr	350.00
Send e-mail to Mr. Isaac and Mr. Victor Roffe to confirm their instructions over adversary proceedings.	0.30 175.00/hr	52.50
2/8/2010 Prepare Certificate of Service along with motion's exhibits.	0.30 175.00/hr	52.50
2/11/2010 Prepare motion to convert hearing.	3.80 175.00/hr	665.00
2/12/2010 Meeting with Isaac Roffe to review exhibits for Gladys Montes' adversary proceeding.	2.00 175.00/hr	350.00
2/15/2010 Legal research about rejection of franchise agreements as executory contracts and separability of covenants not to compete; available remedies to enforce agreements - injunction.	1.00 175.00/hr	175.00
2/16/2010 Meeting with Roffe's to gather exhibits for injunction hearing.	2.00 175.00/hr	350.00
2/17/2010 Prepare draft of motion to request injunction hearing.	0.50 175.00/hr	87.50
Legal research: Injunctions and Temporary Restraining Orders for the Federal District Court	2.00 175.00/hr	350.00
Prepare letter to attorney Anabelle Quiñones Rodriguez to schedule meeting to discuss possible settlement in the case.	0.70 175.00/hr	122.50
2/19/2010 Legal research : Injunctions and TRO Jurisprudence	1.00 175.00/hr	175.00
2/23/2010 Prepare draft of joint pre trial motion: factual allegations and witnesses.	1.50 175.00/hr	262.50
Review and organize exhibits for hearing and PT motion.	0.50 175.00/hr	87.50
2/24/2010 Continue research of injunction and TRO's in adversary proceedings.	1.50 175.00/hr	262.50
Continue to prepare motion to request injunction hearing.	1.00 175.00/hr	175.00
Prepare all exhibits for Joint Pre Trial Order.	0.50 175.00/hr	87.50

	<u>Hrs/Rate</u>	<u>Amount</u>
2/25/2010 Prepare draft of the preliminary injunction and TRO.	1.00 175.00/hr	175.00
2/26/2010 Prepare draft of motion to request injunction hearing.	2.00 175.00/hr	350.00
3/1/2010 Prepare motion for continuance.	1.00 175.00/hr	175.00
3/5/2010 Continue to prepare draft of Motion to request injunctive hearing.	1.10 175.00/hr	192.50
Research injunctions in the bankruptcy context.	1.20 175.00/hr	210.00
3/6/2010 Prepare final draft of the TRO and Injunction memorandum and request.	1.00 175.00/hr	175.00
3/18/2010 Prepare draft of proposed joint pre trial order for the case of reference.	2.00 175.00/hr	350.00
3/22/2010 Prepare outline and exhibits for meeting with Gladys Montes' counselor.	2.70 175.00/hr	472.50
3/23/2010 Send e-mail to Anabelle Quiñones, Esq. to schedule a pre trial conference.	0.30 175.00/hr	52.50
4/5/2010 Review e-mail from Mr. Isaac Roffe with Franchise Inventory for the Fajardo store.	0.20 175.00/hr	35.00
4/6/2010 Prepare letter for Anabelle Quiñones, Esq. regarding not appearance to meeting.	1.00 175.00/hr	175.00
4/9/2010 Correct Proposed Joint Pre Trial Order.	0.20 175.00/hr	35.00
Review order scheduling hearing for May 25, 2010.	0.10 175.00/hr	17.50
Reading and consideration of order rescheduling Pre Trial Conference.	0.20 175.00/hr	35.00
Start preparing non compliance motion and affidavit since Gladys Montes' attorney has not complied with court's orders to meet before pre-trial hearing.	0.30 175.00/hr	52.50
5/17/2010 Prepare motion to inform non compliance with court's order.	1.00 175.00/hr	175.00

	<u>Hrs/Rate</u>	<u>Amount</u>
5/17/2010 Review and correct Joint Pretrial Scheduling Order.	0.60 175.00/hr	105.00
5/20/2010 Send e-mail to Mrs. Quiñones requesting that she communicate with our offices.	0.20 175.00/hr	35.00
Prepare motion requesting sanctions against defendant for her failure to appear at meetings in preparation of the pretrial.	1.00 175.00/hr	175.00
5/21/2010 Review and correct El Telar's Joint Pre Trial Order. Prepare exhibits.	1.50 175.00/hr	262.50
Prepare and file final draft of El Telar's Joint Pre Trial Order with the exhibits.	1.50 175.00/hr	262.50
5/25/2010 Reading and consideration of opposition to motion requesting sanctions filed by Anabelle Quiñones, Esq.	0.30 175.00/hr	52.50
Attend court hearing in the case of reference.	2.00 175.00/hr	350.00
5/26/2010 Prepare letter to Anabelle Quiñones, Esq. to perform a meeting to discuss possible settlement of the case.	1.00 175.00/hr	175.00
Prepare letter to Mrs. Anabele Quiñones informing of a date for the settlement meeting.	1.00 175.00/hr	175.00
For Professional Services Rended OUT OF POCKET DISBURSEMENTS	52.90	\$9,257.50
1/22/2010 Process server fees in order to serve summons into defendant.		75.00
5/21/2010 Legal stamp for affidavit on :Affidavit of Non Compliance.		3.00
Total Out of Pocket Disbursements		\$78.00
Total of this Invoice		\$9,335.50
Total Balance Due		\$9,335.50